

Notice of Allowability

Application No.

09/867,442

Examiner

Arrienne M. Lezak

Applicant(s)

SHEYMOV ET AL.

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 13 January 2006.
2. ☒ The allowed claim(s) is/are 1-16, 21, 22 & 27-29.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date 13 January 2006
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 2/06
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.


JEFFREY PWU
PRIMARY EXAMINER

ALLOWANCE

Election/Restrictions

This application is in condition for allowance except for the presence of claim 30 directed to a specific embodiment of Applicant's invention enumerating a tri-level monitoring system with specific associated functionalities requiring further search and consideration, and as such, Claim 30 is non-elected without traverse. Accordingly, per a telephone interview with Applicant's Attorney, Carlos R. Villamar on 15 February 2006, Claim 30 has been cancelled.

Allowable Subject Matter

The following is an examiner's statement of reasons for allowance:

After extensive searching and analysis of the best prior art in light of Applicant's claimed invention, Examiner finds that the combination of applied references, (Hollenberg '335, Yavatkar '702 and Davis '952), do not disclose all of the claim limitations of the claims as amended within Applicant's request for continued examination dated 13 January 2006.

Additionally, further search and consideration has revealed the following prior art:

US Patent US 6,981,146 B1 to Sheymov;

US Patent US 6,748,540 B1 to Canestaro; and

US Patent 5,864,683 to Boebert.

Careful consideration of the additional prior art alone and in combination with the previously cited prior art does not read upon each and every claim limitation, as enumerated within Applicant's request for continued examination dated 13 January 2006. Moreover, Examiner finds that absent improper hindsight reconstruction of Applicant's invention, one of ordinary skill in the art would find no motivation to modify and/or combine any of the aforementioned prior art in order to create all aspects of Applicant's invention as recited within the new claim language enumerated within Applicant's request for continued examination dated 13 January 2006.

Thus, Examiner finds Claims 1-16, 21, 22 & 27-29 to be allowable.

Claim Rejections - 35 USC § 112

Examiner finds that Applicant's amendment of Claim 28 is proper and thus rejection under 35 USC § 112 is hereby withdrawn.

Terminal Disclaimer

Examiner requires a Terminal Disclaimer for application no. 09/925,503 to Sheymov. The terminal disclaimer filed on 16 February 2006 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of Application No. 09/925,503 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arrienne M. Lezak whose telephone number is (571)-272-3916. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571)-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Arrienne M. Lezak
Examiner
Art Unit 2143

AML


JEFFREY PWU
PRIMARY EXAMINER